

DOCUMENT RESUME

07643 - [C3208310]

Patent and Trademark Fees Need To Be Raised. CID-78-163;
B-157691. November 14, 1978. 10 pp. + 3 appendices (6 pp.).

Report to the Congress; by Elmer B. Staats, Comptroller General.

Issue Area: Program and Budget Information for Congressional Use
(3400); Alternative Approaches or Methods to Achieve Federal
Program Objectives (3600).

Contact: Community and Economic Development Div.

Budget Function: Commerce and Transportation: Other Advancement
and Regulation of Commerce (403).

Organization Concerned: Department of Commerce; Patent and
Trademark Office.

Congressional Relevance: House Committee on the Judiciary;
Senate Committee on the Judiciary; Congress.

Authority: Patent Act of 1952, as amended (35 U.S.C. 41).

Trademark Act of 1946, as amended (15 U.S.C. 1113). Patent
Act of 1975; S. 2255 (94th Cong.). H.R. 13628 (95th Cong.).

During fiscal year 1977, the Patent and Trademark Office (PTO) of the Department of Commerce received 109,773 patent applications and 63,886 trademark applications. The principal fees the PTO charges for its patent and trademark services are prescribed by statute; in 1965, PTO user fees were set by the Congress to recover about 74% of PTO operating costs. Findings/Conclusions: Fiscal year 1977 operating costs rose by \$87.5 million, and the cost recovery rate fell to 32%. If the recovery of costs had been the considered reasonable rate of 74%, an additional \$37 million would have been collected from patent and trademark users. Statutory fees for individual patent and trademark services need to be increased so that a more reasonable share of PTO's costs may be borne by those using its services. Some individual inventors and small business concerns may not have adequate resources so that higher fees could deter them from obtaining patents and trademarks. The Congress may wish to consider lower fees for independent inventors and small businesses with limited resources. Recommendations: The Congress should amend the patent and trademark acts to update patent and trademark fees. In the future, the Congress should: establish criteria that will assure a constant overall recovery of a fixed percentage of PTO's operating cost, authorize the Secretary of Commerce to periodically determine and establish revised fees based on the cost recovery criteria established in the law, and specify how frequently fees should be adjusted.

(RRS)

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

8310

Patent And Trademark Fees Need To Be Raised

People using U.S. Patent and Trademark Office services pay fixed statutory fees while operating costs rise. The American taxpayer bears the burden of these increased costs.

The Congress should (1) raise fees to achieve a more equitable sharing of costs and (2) authorize procedures to maintain the sharing relationship. The Congress may also wish to consider lower fees for independent inventors and small business concerns to encourage the innovations of those with limited resources.



CED-78-163

NOVEMBER 14, 1978



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-157691

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the need to raise the statutory fees in the U.S. Patent and Trademark Office and suggests ways to provide for a constant and equitable recovery of fees in the future. We made this review because operating costs in the Office have increased substantially since the Congress last adjusted fees in 1965.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretary of Commerce.

A handwritten signature in black ink, reading "Thomas B. Blanton".

Comptroller General
of the United States

D I G E S T

The Congress should revise statutory fees charged by the U.S. Patent and Trademark Office to bring them more in line with current operating costs. In 1965, when fees were last revised, a cost recovery rate of 74 percent was considered reasonable. Since then, operating costs have increased substantially, while income from fees has increased only slightly. In 1977, the Patent and Trademark Office's operating costs were \$87.5 million and fee income collected was \$28 million--a cost recovery rate of 32 percent. If the recovery of costs had been 74 percent, an additional \$37 million would have been collected from patent and trademark users. (See pp. 3 to 5, and app. II.)

GAO estimates that, if the Congress raises the fees to establish the cost recovery level at 74 percent, the combined filing and issuance fees for patents will have to be increased from an average of \$229 to \$546 a patent--an increase in average fees of 138 percent. This is less of a percentage increase than was approved in 1965. Much of this increase merely represents an adjustment caused by the substantial decline in the dollar's purchasing power in the past 12 years. (See pp. 5 to 6.)

Domestic and foreign companies are the primary users of Patent and Trademark Office services, followed by individuals and governments. Some independent inventors and small business concerns may not have adequate resources and higher fees could deter them from obtaining patents and trademarks. Consequently, the Congress may wish to consider lower fees for independent inventors and small business concerns with limited resources. (See p. 6.) GAO believes that the Congress should authorize the Secretary of Commerce to periodically adjust the fees to maintain whatever cost

recovery level the Congress determines appropriate. This would avoid the necessity for the Congress to periodically adjust the fees and would assure a constant and equitable level of cost recovery. (See pp. 8 and 9.)

The Department agreed with most of GAO's conclusions and recommendations and recognized that the level of cost recovery is properly left for the Congress to decide. It argued for a lower cost recovery level than was used in 1965 and believes that other means of revising the fee structure should be considered before any final congressional action is taken.

GAO agrees that when the Congress considers increasing statutory fees, it should also consider revising the fee structure. However, if lengthy delays in developing fundamental changes to the existing fee structure are anticipated, the Congress should consider an interim adjustment. This approach seems especially appropriate if there is agreement on the principle that a greater part of the Patent and Trademark Office's operating costs should be recovered from its users. (See pp. 9 and 10 and app. III.)

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Statutory authority for fees charged	1
Recent attempts to revise fees	2
Scope of review	2
2 FEE INCOME NOT KEEPING PACE WITH RISING COSTS	3
Comparison of income and operating costs	3
Estimated impact of increased fees	5
Groups affected by increased fees	6
3 CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS	8
Conclusions	8
Recommendations to the Congress	8
Agency comments and our evaluation	9
APPENDIX	
I Income from fees, fiscal year ended September 30, 1977	11
II Schedule of estimated fee income that would have been received had recovery of operating costs been established and maintained at a 74-percent level	13
III Letter dated September 7, 1978, from the Commissioner of Patents and Trademarks	14

ABBREVIATIONS

GAO	General Accounting Office
PTO	Patent and Trademark Office

CHAPTER 1

INTRODUCTION

The Patent and Trademark Office (PTO), an agency of the Department of Commerce, primarily assists and encourages the development of business and industry in the United States. It provides patent protection for inventions and registers trademarks, serving the interests of inventors and businesses. It also aids and encourages innovation and the scientific and technical advancement of the Nation through preservation, classification, and dissemination of patent information.

PTO examines applications and grants patents on inventions. It also (1) publishes and disseminates patent information, (2) records assignments of patents, (3) maintains search files of U.S. and foreign patents and a search room for examining issued patents and records, and (4) provides copies of patents and official records on request. It performs similar functions in relation to trademarks.

In fiscal year 1977, PTO had about 2,800 employees and an operating budget of about \$87.5 million. During the year PTO received 109,773 patent applications and granted 72,832 patents; in addition, 63,886 trademark applications and requests for renewal were received and 44,094 trademarks were registered or renewed.

STATUTORY AUTHORITY FOR FEES CHARGED

The principal fees PTO charges for its patent and trademark services are prescribed by statute. Fees are authorized by the Patent Act of 1952, as amended (35 U.S.C. 41), and the Trademark Act of 1946, as amended (15 U.S.C. 1113). These fees were last increased in 1965. At that time the Senate Committee on the Judiciary presented the following views on the expected relationship between fee income and operating costs:

"The present bill provides that when all fees are fully effective, the Patent Office would recover approximately 74 percent of their costs.
* * * It is the view of the Committee that the fee schedule contained in this bill provides for a reasonable percentage of Patent Office costs to be borne by those directly benefiting from Patent Office services.

"The Committee is of the view that the increase in fees provided for in this bill will not deter the

inventive genius of the American people or reduce the filing of patent applications."

RECENT ATTEMPTS TO REVISE FEES

Since 1965, a number of bills containing provisions for fee revision have been introduced in the Congress. These bills, however, were part of controversial major patent reform legislation and, therefore, were not enacted into law.

The most recent attempt at major patent reform--The Patent Act of 1975 (S. 2255, 94th Cong.)--passed the Senate on February 26, 1976, but was not acted on in the House. This bill included the following provisions regarding fees:

- The Commissioner of PTO was to regulate the fees to be charged.
- Fees were to achieve an overall recovery of about 50 percent of PTO's operational costs.
- Fees were not to be adjusted more than once every 2 years.

SCOPE OF REVIEW

We made our review at PTO headquarters in Arlington, Virginia where we reviewed legislation on PTO programs, testimony before the Congress on bills concerning fees, and relevant reports and studies. We compared operating costs with related fee income and estimated the impact of revising fees. We also discussed the results of our work with PTO officials.

CHAPTER 2

FEE INCOME NOT KEEPING PACE WITH RISING COSTS

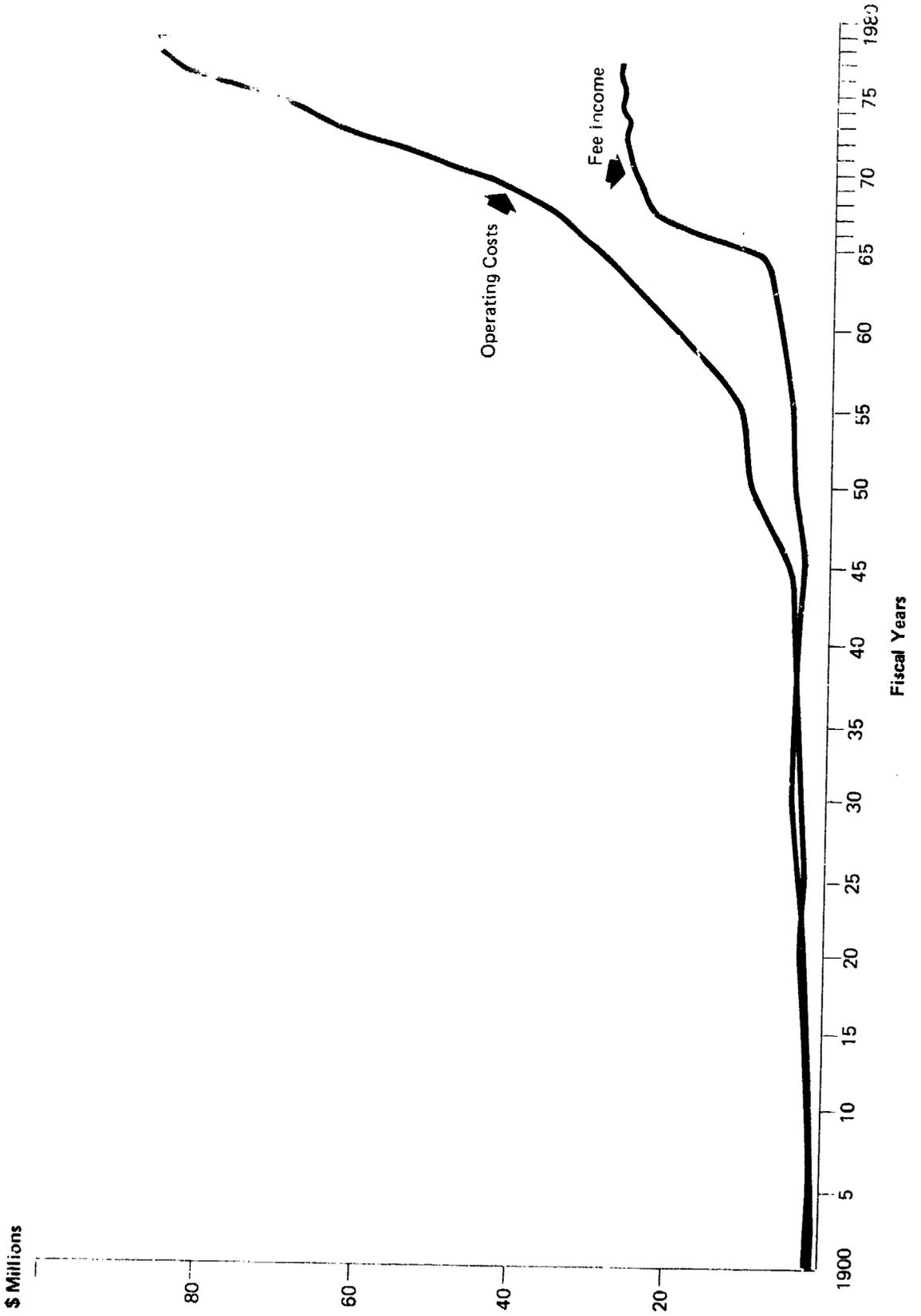
In 1965, PTO user fees were set by the Congress to recover about 74 percent of PTO operating costs. ^{1/} Since then, operating costs have risen to the point that user fees collected in 1977 recovered only 32 percent of PTO operating costs.

COMPARISON OF INCOME AND OPERATING COSTS

PTO was largely self-supporting for many years. Between 1900 and 1940, fee income exceeded operating costs for 22 years and did not go below 81 percent of operating costs for 19 years. Cost recovery steadily declined after 1940, dropping to 29 percent in 1965 when fees were last raised by the Congress. Shortly thereafter income from fees increased, and the cost recovery level rose only to decline again as costs soared and income remained relatively stable. The correlation between fee income and operating costs since 1900 is shown in the following chart.

^{1/}Operating costs are expenses incurred for goods and services used to conduct organization activities during an accounting period.

Income and Operating Costs



The following table shows the amount and percent of operating costs recovered by user fees and the amount and percent of operating costs financed by taxpayers since 1965. The decline in costs recovered from user fees to 32 percent in 1977 is almost as low as in 1965 when the fees were last increased.

Fiscal year	Operating cost (000 omitted)	Costs recovered by user fees		Costs financed by taxpayers	
		Amount (000 omitted)	Percent	Amount (000 omitted)	Percent
1965	\$ 31,252	\$ 9,204	29	\$ 22,054	71
1966	33,507	18,146	54	15,361	46
a/1967	35,534	23,666	67	11,868	33
1968	38,571	24,526	64	14,045	36
1969	42,576	25,456	60	17,120	40
1970	49,367	26,278	53	23,089	47
1971	55,123	27,506	50	27,617	50
1972	61,339	27,883	45	33,456	55
1973	64,536	26,119	40	38,417	60
1974	73,091	28,822	39	44,269	61
1975	78,129	27,761	36	50,368	64
1976	83,064	28,240	34	54,824	66
1977	<u>87,506</u>	<u>27,980</u>	32	<u>59,526</u>	68
Total	<u>b/\$733,601</u>	<u>b/\$321,587</u>		<u>\$412,014</u>	

a/ First year in which the 1965 fee schedule became fully effective.

b/ Does not include the 1976 transition quarter operating costs of \$21.4 million and fee income of \$7.3 million.

As shown above, the 74-percent cost recovery level considered reasonable in 1965 was never fully realized. Had it been realized and maintained during the past 11 years, PTO would have received over \$200 million in additional fees. In fiscal year 1977 alone, the additional costs recovered would have amounted to almost \$37 million. (See app. II.)

ESTIMATED IMPACT OF INCREASED FEES

The impact of PTO fee increases can be seen by examining what would happen if filing fees and issue fees for patents were increased to the 74-percent cost recovery level considered reasonable in 1965. These two fees are the most important in terms of income produced. (See app. I.) In fiscal year 1977, filing fees accounted for 32 percent and issue

fees accounted for 36 percent of PTO's total fee income. Although fee amounts vary depending on the type and complexity of the patent applied for, in fiscal year 1977 the combined fees averaged \$237 a patent.

If fees were revised to a 74-percent recovery level, the combined filing and issue fees would amount to \$546, an increase of \$317 (\$546 minus the average of \$229 projected in 1965), or 138 percent. This is not as large or burdensome as might first appear. This estimated increase is not nearly as large as occurred in 1965 when the average fees were raised from \$66 to \$229, a 247-percent increase. In addition, the purchasing power of the dollar has declined substantially since 1965 due to inflation. Much of the \$317 increase represents an adjustment for this factor.

GROUPS AFFECTED BY INCREASED FEES

The primary burden of increased fees would fall most heavily on the principal beneficiaries of patent and trademark services--the companies, independent inventors, and governments that receive the thousands of patents and/or trademarks PTO grants each year. A summary of patent recipients for calendar year 1977 follows.

<u>Recipient</u>	<u>Number of patents issued</u>			<u>Percent of total</u>
	<u>United States</u>	<u>Foreign</u>	<u>Total</u>	
Companies	31,531	18,000	49,531	76
Independent inventors	10,251	3,776	14,027	21
Governments	<u>1,491</u>	<u>220</u>	<u>1,711</u>	<u>3</u>
Total	<u>43,273</u>	<u>21,996</u>	<u>65,269</u>	<u>100</u>

Some companies and independent inventors obtain only one patent. However, many large companies obtain several hundred patents each year and some independent inventors obtain hundreds of patents during their careers. A PTO study identified 58 U.S. companies, 9 foreign companies, and 6 U.S. Government agencies which had received 500 or more patents during a recent 5-year period; one corporation had received over 3,000 patents.

Presently, about 460,000 trademarks are registered and in force. Data summarizing the number of companies that own trademarks or the number of trademarks owned by individual

companies is not readily available. Some companies, particularly those in the consumer product fields with many product lines, may own numerous trademarks whereas other firms may only own one.

These recipients would be the ones most affected by fee increases. However, the cost of PTO's services is usually a small part of the total cost incurred in the invention and innovation process. In each case the anticipated economic rewards or expected prestige must be of sufficient value to the patent or trademark owner to justify the costs involved in obtaining a patent or trademark.

We realize that some independent inventors and small business concerns may not have adequate resources and that higher fees could deter them from obtaining patents and trademarks. Consequently, a lower level of fees may be desirable for these inventors.

CHAPTER 3

CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS

CONCLUSIONS

PTO's main source of income is statutory fees for patent and trademark services. Since the fees were last revised in 1965, costs have risen sharply.

In 1965, a cost recovery rate of 74 percent was considered reasonable. The actual recovery level has dropped steadily since that time to 32 percent in 1977. We estimate that had the 74-percent cost recovery level been maintained, in 1977 the taxpayers' share of PTO's operating costs would have been about \$37 million less.

Since 1965 a number of bills containing provisions for fee revisions have been introduced in the Congress; however, these bills were part of controversial major patent reform legislation and, as a result, did not become law.

We believe that statutory fees for individual patent and trademark services need to be increased so that a more reasonable share of PTO's costs may be borne by those using its services. The percent of costs which should be recovered directly through user fees is a matter for congressional determination. Once that determination is made, however, the Congress should revise PTO's statutory fee schedule accordingly. The Congress may wish to provide for lower fees for independent inventors and small business concerns with limited resources. Independent inventors and small business concerns are a valuable source of new ideas which should be encouraged, not discouraged.

We also believe that the Congress should authorize the Secretary of Commerce to periodically adjust PTO's fee schedule to maintain whatever cost recovery level it determines appropriate. The Congress would then avoid the necessity of having to periodically adjust the fee schedule. This would also provide for a constant and equitable level of recovery.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend the patent and trademark acts to update patent and trademark fees. We also recommend that, to provide for more equitable fees in the future, the Congress:

- Establish criteria that will assure a constant overall recovery of a fixed percent of PTO's operating cost.
- Authorize the Secretary of Commerce to periodically determine and establish revised fees based on the cost recovery criteria established in the law.
- Specify how frequently fees should be adjusted.

To encourage inventive genius, the Congress may wish to establish a lower level of fees for independent inventors and small business concerns with limited resources.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Commerce agreed with most of our conclusions and recommendations to the Congress. It recognizes that a specific percentage recovery, or the way in which this recovery is achieved, is for the Congress to decide. The Department argued for a lower cost recovery formula than the 74 percent that was used in 1965 and also believed that several other provisions should be considered before any final congressional action is taken. (See app. III.)

The Department pointed out that our report does not address the fact that the current economic situation may require a different cost recovery formula than was used in 1965. We do not know what cost recovery level is appropriate for today--that is for the Congress to decide. We used 74 percent in our report because it is the only cost recovery level accepted by the entire Congress since 1965. The fact remains that the current economic situation is the very reason fees need to be raised--to "catch up" with reality. As mentioned on page 6, the majority of the increase in fees is attributable to the need to adjust for current inflationary pressures.

The Department believes that continued invention and innovation must come from the private sector, with an incentive from the patent system, and that a significant increase in fees may not be compatible with the need to increase incentives to industry to invent, innovate, and invest in new technology. Raising patent fees certainly would not change the patent system incentive--a 17-year monopoly to exclude others from using an invention without remuneration to the owner. Patent fees are such a small part of industry's total cost of invention and innovation that it is doubtful their increase would seriously affect technological progress in

this country. Further, the Government has a variety of more efficient and effective incentive programs it can use to stimulate the development of new technology. The same argument was also considered by the Congress in 1965 and it concluded then that increased fees would not have a discouraging effect on innovation. Experience has shown that this conclusion was valid.

The Department noted that our report does not make any specific suggestions on how the fee structure should be revised to achieve a higher percentage of cost recovery. It, therefore, took the opportunity to propose that consideration be given to alternative fee provisions such as a system of maintenance fees and the authority to supplement appropriations with income from fees. This report deals with the fee structure which now exists under the present law. Proposals to revise the fee structure have been made to the Congress in recent years, but none have been enacted into law. Nevertheless, we agree that when the Congress considers increasing statutory fees, it should also consider revising the fee structure. However, if lengthy delays in developing fundamental changes to the existing fee structure are anticipated, the Congress should consider an interim adjustment. This approach seems especially appropriate if there is agreement on the principle that a greater part of the Patent and Trademark Office's operating costs should be recovered from its users.

Further, we are not in favor of agencies supplementing their appropriations by income earned from fees. These fees should continue to be paid into the Treasury as miscellaneous receipts. We advocate the financing of patent and trademark operations through direct appropriations, to provide for the adequate and continuing congressional control over the reliability, effectiveness, and economical operation of the patent system.

Finally, the Department believes that consideration should be given to providing reduced fees for small business concerns. Many small business concerns are well financed and would not be in need of reduced fees. As with individual inventors, however, a lower level of fees may be desirable for small business concerns which do not have adequate resources and could be deterred from obtaining patents and trademarks.

INCOME FROM FEESFISCAL YEAR ENDING SEPTEMBER 30, 1977

<u>Statutory patent fees</u>	<u>Unit fee</u>	<u>Income</u>	
Application for original patent except designs	\$ 65.00	\$ 6,680,367	
Extra claims	-	+2,342,440	
Total filing fees			\$ <u>9,022,807</u>
Issue of original or reissue patent, basic	100.00	6,662,715	
Specification pages or portion, as printed, each page	10.00	3,088,922	
Drawings as printed, each sheet	2.00	+ 311,504	
Total issue fees			<u>10,063,141</u>
Application for reissue patent, basic	65.00	36,381	
Extra claims	-	12,413	
Revival of abandoned patent application	15.00	26,720	
Delayed payment of patent issue fee	15.00	7,664	
Patent appeal	50.00	491,912	
Filing of brief for support of appeal	50.00	272,999	
Certificate of correction in patent cases	15.00	28,581	
Patent disclaimer	15.00	28,739	
Application for design patent	20.00	146,483	
Issue of design patent, 3-1/2 years	10.00	600	
Issue of design patent, 7 years	20.00	2,480	
Issue of design patent, 14 years	30.00	115,526	
Printed copies - patent (per copy)	.50	1,810,592	
Printed copies - design (per copy)	.20	12,544	
Copies of plant patents in color (per copy)	1.00	225	
Recording each patent assignment	20.00	1,423,105	
Recording each additional patent or application	3.00	57,413	
Library subscription service, annual	50.00	+ 873	
Total other fees			<u>4,475,250</u>
Total statutory patent fees			<u>23,561,198</u>

<u>Statutory trademark fees</u>	<u>Unit fee</u>	<u>Income</u>	
Application for registration in each class	\$ 35.00	\$ 1,605,079	
Application for renewal of registration, each class	25.00	156,181	
Delayed application for renewal, additional	5.00	4,260	
Publication of each mark, section 12(c)	10.00	360	
Notice of opposition, each class	25.00	38,975	
Appeal to Trademark Trial and Appeal Board, each class	25.00	7,330	
Application for cancellation, each class	25.00	9,945	
Issuance of new trademark certificate	15.00	2,421	
Certificate of correction in trademark cases	15.00	1,845	
Trademark disclaimer after registration	15.00	75	
Amendment after registration	15.00	6,812	
Filing of affidavit, section 8(a) or (b), each class	10.00	141,012	
Petition for revival of abandoned application	15.00	3,940	
Printed copies, trademark (per copy)	.20	1,471	
Recording each trademark assignment	20.00	92,959	
Recording each additional trademark or application	3.00	+ 46,868	
Total statutory trademark fees			\$ 2,119,533
Total statutory patent fees			<u>23,561,198</u>
Total statutory fees			25,680,731
Total administrative fees set by PTO (not detailed)			<u>2,298,860</u>
Total income from fees			<u>\$27,979,591</u>

SCHEDULE OF ESTIMATED FEE INCOME THAT WOULD HAVE BEEN RECEIVED
HAD RECOVERY OF OPERATING COSTS BEEN ESTABLISHED
AND MAINTAINED AT A 74-PERCENT LEVEL (note a)

<u>Year</u>	<u>Operating costs</u>	<u>Estimated fee income at 74% of operating cost</u>	<u>Actual fee income</u>	<u>Estimated additional fee income that would have been received (note b)</u>
----- (000 omitted) -----				
1967	\$35,524	\$26,295	\$23,666	\$ 2,629
1968	38,571	28,543	24,526	4,017
1969	42,576	31,506	25,456	6,050
1970	49,367	36,532	26,278	10,254
1971	55,123	40,791	27,506	13,285
1972	61,339	45,391	27,883	17,508
1973	64,536	47,757	26,119	21,638
1974	73,091	54,087	28,822	25,265
1975	78,129	57,815	27,761	30,054
1976	83,064	61,467	28,240	33,227
1977	87,506	64,754	27,980	<u>36,774</u>
Total				<u>\$200,701</u>

a/ 74 percent represents the level of cost recovery anticipated when the 1965 fee revisions were enacted into law.

b/ These amounts were borne by the American taxpayer.



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SEP 7 1978

Mr. Henry Eschwege
Director
Community and Economic
Development Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Secretary Kreps has asked me to respond to your letter of August 21, 1978, forwarding a copy of a draft report to Congress entitled "Patent and Trademark Fees Need To Be Raised".

The draft report emphasizes that the last time the Patent and Trademark Office fees were revised, in 1965, Congress established fees designed to reach a 74% recovery of the costs of operating the Office. The draft report provides some useful data illustrating the fact that since 1965 our operating costs have increased significantly, while fee income has remained somewhat constant. Accordingly, our percentage recovery of our costs has declined. The conclusion of the draft report is that patent and trademark fees need to be increased. However, a specific percentage recovery or the way in which this recovery is achieved is left, properly, for Congress to decide. The draft report also suggests that Congress may want to charge reduced fees to independent inventors.

The broad recommendation for increasing the percentage recovery of the costs of operating the Patent and Trademark Office seems reasonable. I believe the draft emphasizes unduly the conclusion that Congress intended a 74% recovery when it passed the last fee revision in 1965, yet almost ignores the fact that the Senate, with Administration support, passed a bill in 1976 (S. 2255, 94th Cong., 2d Sess.) which provided for a 50% cost recovery. This more recent Congressional position reflects the recognition that the publication and dissemination of advanced technological information found in patents provides a significant public benefit. Moreover, the report does not address the fact that our current economic situation may require a different cost recovery formula than was used in 1965.

There has been a recognized decline in the level of innovation in this country in recent years which has contributed significantly to our growing balance of trade deficit, the instability of our currency, and other economic problems. Senator Stevenson recently stated that technological innovation was responsible for 45% of the Nation's economic growth from 1929 to 1969 and remains the key to our ability to compete in world markets. Unless we reverse this declining trend in technological superiority, our "American way of life" will suffer dire consequences. Continued invention and innovation must come from our private sector, spurred on by the incentives of the patent system. A significant increase in patent fees at this time may not be compatible with the need to increase the incentives to industry to invent, innovate, and invest in new technology.

Consideration should also be given to the question of using all or part of any increase in the percentage of recovery of our costs as a supplement to the Patent and Trademark Office appropriations. This would enable the Office to improve the reliability of newly issuing patents and thus enhance the effectiveness of the patent system with no increase in the current level of support by taxpayers. Certainly, it would both be unfair and politically devastating to propose an increase in patent and trademark fees without first, or at least at the same time, providing the Patent and Trademark Office with sufficient funding to conduct a quality examination and promptly dispose of applications at the same rate as they are being filed. The Patent and Trademark Office will not be in such a position in FY-1979 and FY-1980.

The draft report does not make any specific suggestions on how the fee structure should be revised to achieve a higher percentage cost recovery. The only discussion of increased fees involves merely raising patent filing and issue fees to increase our percentage recovery. We would assume that this is in no way intended to limit the alternatives which are available.

For example, S. 2255 provided for a system of maintenance fees. This concept, common to many foreign patent systems, could provide significant additional income. With such a system, filing and issue fees could be kept relatively low, while our percentage recovery could be increased.

A bill pending in Congress, H.R. 13628, would provide the authority for the Office to reimburse its appropriations with income from certain fees. Many services provided currently could be made fully reimbursable under this bill.

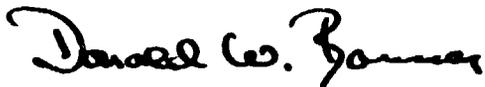
This also would significantly increase our percentage recovery of costs.

These are but two examples of the types of fee provisions which should be taken into consideration before any final Congressional action is taken. I believe that these and other alternatives should be addressed in the draft report.

The draft report recognizes the need for administrative flexibility to periodically revise fees, as well as the need to provide reduced fees to individual inventors. Both of these features were part of S. 2255. Consideration should also be given to providing reduced fees for small business concerns.

I hope these comments are helpful. If I may be of further assistance, please do not hesitate to let me know.

Sincerely,



Donald W. Banner
Commissioner of Patents
and Trademarks

(06216)